

Forman v Metropolitan Transp. Auth.

2019 NY Slip Op 32797(U)

September 20, 2019

Supreme Court, New York County

Docket Number: 160800/2015

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH

PART IAS MOTION 32

Justice

-----X

INDEX NO. 160800/2015

IRA FORMAN

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 003, 004

- v -

THE METROPOLITAN TRANSPORTATION AUTHORITY,

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 45-84
were read on this motion to/for SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 004) 59-90
were read on this motion to/for SUMMARY JUDGMENT

Motion sequence 003 and 004 are consolidated for disposition. ¹ Plaintiff's motion for summary judgment (MS 003) on the issue of liability on the Labor Law claims is denied. The branch of defendant's cross-motion (MS 004) for summary judgment on the Labor Law claims is granted and the branch of the cross-motion for summary judgment on the general negligence claim is denied.

Background

This case arises from a tragic Metro North railroad crash that took place in Valhalla, New York on February 3, 2015. Plaintiff works for non-party Port Authority of New York and New

¹ The Court notes that motion sequence 004 essentially serves as a cross-motion/opposition to motion sequence 003 because in the Notice of Motion, defendant states that it is seeking an order denying plaintiff's motion for summary judgment (MS 003) and granting its cross-motion for summary judgment. Instead of responding to MS 003 with a cross-motion, defendant brought a separate motion (MS 004) for its cross-motion. Therefore, MS 004 will be addressed as a cross-motion to MS 003.

Jersey as the Senior Manager of Emergency Operations. Defendant is the Metropolitan Transportation Authority (“MTA”). The day after the accident, plaintiff was dispatched to the site to offer assistance and investigate the accident. Plaintiff’s investigative duties included assessing the disaster scene and determining what type of coordination was needed among the different transportation agencies and also analyzing whether any lessons could be learned for future emergencies. Once plaintiff got to the site, he was given a hardhat by defendant and he entered the crash scene by walking on the train tracks between the rails. After investigating the scene, he drove to the Family Assistance Center nearby to assist families of the victims of the accident. Plaintiff returned to the site later in the afternoon, after lunch, and again walked to where the crash occurred. However, this time plaintiff was unable to walk on the tracks because defendant had parked a utility truck on the tracks, forcing plaintiff to step off the tracks and walk on the snow-covered area abutting the tracks. While walking on this area, plaintiff lost his balance and fell.

Plaintiff moves for summary judgment under Labor Law §240(1), § 241(6), and §200. He argues that he is protected under the Labor Law because the accident site is a construction site and “plaintiff was injured while consulting on an underway construction/demolition project” (NYSCEF Doc. No. 81 at pg.6). In response, defendant claims that the accident site is not a construction site and that plaintiff was not there to do construction-related work and therefore, plaintiff is not protected under the Labor Law and the claims brought under it must be dismissed. Plaintiff also brings a general negligence claim against defendant, alleging that it failed to keep the premises safe.

Discussion

To be entitled to the remedy of summary judgment, the moving party “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence

to demonstrate the absence of any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court’s task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d’Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

Labor Law

The Court does not find that plaintiff’s accident is of the type that the Labor Law was enacted to cover and plaintiff is not part of the class of individuals protected by the legislation. The Labor Law was created to protect the safety of workers employed at construction sites. “We have held that in order to invoke the protections afforded by the Labor Law and to come within the special class for whose benefit liability is imposed upon contractors, owners and their agents, a plaintiff must demonstrate that he was both permitted or suffered to work on a building or structure and that he was hired by someone, be it owner, contractor or their agent. Our holdings

reflect the clear legislative history of sections 200, 240 and 241 of the Labor Law, which demonstrates that the Legislature's principal objective and purpose underlying these enactments was to provide for the health and safety of employees" (*Mordkofsky v V.C.V. Dev. Corp.*, 76 NY2d 573, 576-77, 563 NE2d 263 [1990] [internal quotations and citations omitted]). Plaintiff was not hired to work on a building or structure; he was dispatched to the disaster site to investigate the accident and its aftermath. The National Transportation Safety Board ("NTSB") was in charge of the site and its report created after plaintiff's accident identified plaintiff as a volunteer. "Recovery under the Labor Law similarly has been barred in actions where the plaintiff was a volunteer" (*Mordkofsky* at 577). The disaster site at issue is not a construction site and the type of work plaintiff was performing was not the kind for which the Labor Law provides protection. The Labor Law claims are dismissed.

General Negligence

Plaintiff claims that defendant was negligent because it did not take adequate safety precautions at the accident site, such as placing sand on the snow-covered area adjacent to the railroad tracks. However, defendant insists that it did in fact sand that area before plaintiff's accident occurred. In his deposition, J.P. Streany, the Director of Field Safety Operation and Investigations for Metro North, testified that the area around the track that plaintiff walked on to get to the disaster site was "sanded and salted a couple of times during both the overnight and daytime period" (NYSCEF Doc. No. 67 at pg.29). Plaintiff arrived on the scene the day after the railroad accident occurred. Plaintiff alleges in an Affidavit that the sand was not there when he fell and was placed *after* he fell (NYSCEF Doc. No. 50 at ¶ 8), which would necessarily mean that the area was not sanded overnight and throughout the day before plaintiff fell. Thus, a clear issue of

material fact exists and a jury must make a determination whether to believe J.P. Streany or plaintiff with respect to whether the area was sanded before plaintiff fell.

Accordingly, it is hereby

ORDERED that in motion sequence 003, plaintiff's motion for summary judgment on the Labor Law claims is denied; and it is further

ORDERED that in motion sequence 004, the branch of defendant's cross-motion for summary judgment on the Labor Law claims is granted and the Labor Law claims are severed and dismissed. The branch of the motion for summary judgment dismissing plaintiff's complaint in its entirety is denied. As there is a material issue of fact, the general negligence claim remains.



9.20.19

DATE

HON. ARLENE P. BLUTH

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: